REMARKS

Claims 1, 3, 4, 6, 10, 12, 13, 15-19 and 21-24 presently appear in this case. No claims have been allowed. The official action of July 7, 2006, has now been carefully studied. Reconsideration and allowance are hereby respectfully urged.

Briefly, the present invention relates to a composition that is a clear gel for use in skin care and protection. The composition includes 30% - 80% of actual Dead Sea water, a nonionic solubilizer, a hydrophobic active agent, a gelling agent or viscosity modifier, and deionized water. The components are present in amounts that in combination provide a clear gel.

The interview, among Examiners Yu and Padmanabhan and the undersigned attorney, conducted on December 12, 2006, is hereby gratefully acknowledged. In the course of this interview, I pointed out to the examiners that the problem being solved by the present invention was how to get a stable, clear gel using a high concentration of Dead Sea water, as well as a hydrophobic active agent. None of the references suggest that one obtains unexpected results when using a nonionic solubilizer, as compared to the cationic solubilizer of Malençon, for example. I explained that the problem was not merely in getting the hydrophobic active agent to disperse in the aqueous medium to form a clear gel, but also to overcome the problem of the turbidity which

occurs when using such a high electrolyte solution. I pointed out that the declaration of record filed on July 6, 2004, establishes that this turbidity is due to salting out that occurs when an ionic solubilizer is used, but the problem is solved when using a nonionic solubilizer.

The examiners pointed out that the Japanese reference discloses a composition using a nonionic solubilizer along with Dead Sea water. I asked if they considered this reference to be an anticipation and they said that they did not. I then pointed out that the Japanese reference would teach nothing to one of ordinary skill in the art about how to solve the problems encountered by the present invention, because it would not suggest that only by using a nonionic solubilizer will it be possible to obtain a clear gel with a high concentration of Dead Sea water as well as a hydrophobic active agent. There is no disclosure that the bath salt composition of the Japanese patent is a clear gel and no suggestion how to obtain a clear gel of Dead Sea water and a hydrophobic active agent.

With respect to the Flick reference, I explained that, while it may disclose that nonionic solubilizers can produce a clear gel, it does not suggest that such nonionic solubilizers will solve the problem of getting a clear gel despite a high electrolyte concentration formulation. I explained that it was the present inventors who discovered the fact that the turbidity caused by the use of most prior

art solubilizers was due to salting out and that the problem could be solved by using a nonionic solubilizer.

The examiners suggested that claim 5, which specifies specific amounts of solubilizer, etc., might be considered to be allowable. I told the examiners, however, that we intended to delete claim 5 in view of an apparent lack of support in the specification for the minimum of 0.2% nonionic solubilizer. In view of the examiners' suggestion that a recitation of relative amounts of components so as to get a clear gel might be helpful, I suggested amending claim 1 to add to the end:

> , the components being present in amounts that in combination provide a clear gel.

Such a claim would only read on compositions that provide a clear gel.

The examiners agreed to consider a claim with this limitation. They further stated that, if they decide that the amended claim would be allowable, they would enter the amendment after final.

Claims 1, 3, 10, 12, 13 and 15-17 have been rejected under 35 U.S.C. 103(a), as being unpatentable over Malençon in view of Kyotaro, Maor and Flick. The examiner states that Malençon teaches a colorless gel including 1000 ml of filtered sea water, 1 ml of benzalkonium chloride and 50% solution, and 40-80 g of sodium alginate for treatment of the skin. The examiner states that Kyotaro teaches a

bathing composition comprising up to 20% of Dead Sea water or its salts for treatment of the skin, including gelling agents and surfactants as well as hydrophobic active agents and hydrophilic agents. The examiner cites Maor as teaching that a liquid gel composition comprising 1% of concentrated Dead Sea water provides a significant anti-wrinkle treatment effect. The examiner cites Flick as teaching that nonionic ethoxylated emulsifiers (Oleth-20) provide clear CARBOPOL gel and that Ceteh-20, also a nonionic emulsifier, is used as a fragrance solubilizer in clear gels. Thus, the examiner concludes that it would have been obvious to have modified the composition of Malençon by replacing the sea water with Dead Sea water as motivated by Kyotaro and Maor, because these references teach cosmetic benefits of Dead Sea water and the use of nonionic solubilizer would have been motivated as taught by Flick, because of the expectation of successfully producing a clear gel comprising an oil base. This rejection is respectfully traversed.

As discussed above in the context of the interview, the present invention is based on the unexpected discovery that a clear cosmetic gel made of Dead Sea water and a hydrophobic active agent can be made only if the solubilizer used is a nonionic solubilizer. This is established by the declaration of record filed on July 6, 2004, which compares the use of ionic solubilizers with nonionic solubilizers. It can be seen that a clear gel is not obtainable using conventional ionic solubilizers, but is

readily obtainable using a nonionic solubilizer. The Malençon reference of record, cited by the examiner as a primary reference, establishes that the problem being solved by the present invention does not exist when using standard sea water in the composition rather than Dead Sea water. Normal ocean salinity is about 3.5% and varies between about 3.2% and 3.7%. Dead Sea water is greater than 30% salt. Malençon establishes that when using normal sea water, which has an order of magnitude less salinity than Dead Sea water, one can use a cationic surfactant, i.e., benzalkonium chloride, and obtain a clear gel. The declaration of record establishes, however, that when Dead Sea water is substituted for ocean water one cannot get a clear gel using a very similar cationic solubilizer. The present inventors have theorized that this is due to salting out of the Dead Sea water when trying to make the gel, thereby causing turbidity and preventing one from obtaining a clear gel, which is to be desired in such cosmetic compositions.

None of the secondary references of record create the expectation that if a nonionic solubilizer is substituted for the ionic solubilizer of Malençon, one can get a clear gel when using Dead Sea water, as well as a hydrophobic active agent. This is not suggested by the Japanese patent, even though it lists nonionic solubilizers among the possible components of its bath salt composition. The examiners have confirmed that the Japanese reference does not anticipate the present invention. For the purpose

of 35 U.S.C. 103, one of ordinary skill in the art must have a reason to combine the references. There is certainly nothing in the Japanese reference that would suggest that if a nonionic solublizer is used in the composition of Malençon in which Dead Sea water is substituted for ocean water, that one will be able to solve the problem of the turbidity that occurs in such a composition when a conventional solubilizer, such as the cationic solubilizer of Malençon, is used.

The Flick reference does not suggest the solution of the present invention either, as it does not disclose that nonionic solubilizers will provide results that cannot be obtained with ionic solubilizers when dealing with a composition having very high electrolyte concentration. Flick merely discloses certain examples of clear gels that use a nonionic solubilizer. Malençon teaches that clear gels can also be obtained with a cationic solubilizer. Certainly, there is no suggestion in Flick that the use of a nonionic solubilizer will solve the problem of the present invention, i.e., how to get a clear gel in a high electrolyte composition, where an ionic solubilizer will fail. Flick does not suggest that nonionic solubilizers have any superiority to ionic solubilizers under any given conditions. The nature of the problem being solved does not provide the motivation for the combination. Any *prima facie* case of obviousness is rebutted by the evidence that nonionic solubilizers unexpectedly supply superior results

to conventional cationic and ionic solubilizers in the special case of compositions that contain an extremely high amount of electrolytes in addition to a hydrophobic active agent. Accordingly, reconsideration and withdrawal of this rejection is respectfully urged.

Claims 4-6, 18, 19 and 21-24 have been rejected under 35 U.S.C. 103(a), as being unpatentable over Malençon in view of Kyotaro, Maor and Flick, as applied to claims 1, 3, 10, 12, 13-19 and 20-23 and further in view of Thompson. The examiner states that Thompson teach compositions for the treatment of skin using Vitamin E/tocopherol acetate to prevent the oxidation of fatty acids thereby protecting lipids and lipoproteins in cell membranes. The examiner thus states that it would be obvious to add tocopherol acetate to the compositions of the primary references. This rejection is respectfully traversed.

All of the claims involved in this rejection are ultimately dependent from the claims discussed above, which are allowable for the reasons discussed above. If the independent claims are free of the prior art, then the dependent claims must also be free of the prior art. Thompson adds nothing with respect to the deficiencies of the primary references as discussed above. Accordingly, reconsideration and withdrawal of this rejection are also respectfully urged.

It is submitted that all of the claims now present in the case clearly define over the references of record and

fully comply with 35 U.S.C. 112. Reconsideration and allowance are therefore earnestly solicited.

Respectfully submitted,

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